IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10077 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANIBEN PREMABHAI PATEL,B.R.C GATTE, PRABHUNAGAR, DT:SURAT

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/04/2000

ORAL JUDGEMENT

1. Commissioner of Police, Surat City, Surat, passed an order on November 27, 1999, detaining the detenu-Niruben @ Ramashre Lalji Chauhan of Surat, under the provisions of Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for

short).

2. The detaining authority took into consideration three offences registered against the detenu under Bombay Prohibition Act as also statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as a bootlegger and observed that the detenu is required to be immediately prevented from pursuing her anti-activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The only ground that is advanced by learned Advocate Mr. Kapadia is that there is delay in supply of documents demanded on behalf of the detenu by making a representation. In support of his, he has drawn attention of this Court to copy of representation dated December 11, 1999. The said representation was sent to the Government. The Government, in turn, appears to have sent it to the detaining authority on January 7, 2000 and the detaining authority has, again, returned to the Government on January 31, 2000. It is contended that the documents demanded have not been supplied and, therefore, there is infringement of right of making an effective representation.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Having regard to rival side contentions, it may be noted that the representation in question, though sent to the Government, is mainly for demand of documents and not for revocation. It was, therefore, contended by Mr. Dave, learned Assistant Government Pleader, that Government could not have supplied the documents and, rightly so. But the learned Assistant Government Pleader could not explain as to why there was a delay on part of the Government in forwarding the representation to the detaining authority, which is almost three to four weeks. This delay would affect the right of the detenu. Again, if the contention of learned Assistant Government Pleader is accepted, then the detaining authority was bound to supply the documents, which were demanded in the representation. The detaining authority, instead of doing so, after retaining the representation from 7.1.2000 to 31.1.2000, forwards the same to the Government and this delay of three weeks is also not explained. Thus, there is demonstrably gross delay in considering the representation. It is stated that, even

today, the documents are not supplied. The right of the detenu of making an effective representation is, therefore, adversely affected. The continued detention of the petitioner, therefore, is rendered bad in law. The petition deserves to be allowed on this ground alone.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated November 27, 1999, passed against the detenu is hereby quashed. The detenu-Niruben alias Ramashre Lalji Chauhan is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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